



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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AUG 29 2013

Uniform Issue List: 415.01-05

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Legend:

Agency A = XXXXXXXXXXXXXXXXXXXX
State B = XXXXXXXXXXXXXXXXXXXX
Plan C = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxx:

This letter is in response to your ruling request, dated July 11, 2012, as supplemented by correspondence dated January 25, 2013, regarding whether Agency A is a police department within the meaning of Internal Revenue Code (Code) section 415(b)(2)(H)(ii)(I).

The following facts and representations are submitted under penalties of perjury in support of your request.

Agency A is a department of State B whose employees are eligible to participate in Plan C. Plan C is a pension plan maintained by State B.

Agency A is an integral part of the criminal justice system of State B. Agency A partners with other federal, state, local and criminal justice agencies to reduce crime and has a significant role in the development of criminal justice policy for State B. Agency A provides public safety, corrections, and law enforcement services in and outside of State B institutional grounds and State-operated medical facilities for State B. Its published Mission Statement states that its mission is to protect the public, protect staff, and provide safe, secure, and humane supervision of offenders.

Agency A serves and protects the citizens of State B in a number of ways. One way is by confining and controlling accused and sentenced offenders in 18 correctional institutions, centers, and units throughout the State. Agency A also administers medical, mental

health, rehabilitative, and community-based service programs, and provides education and treatment willing inmates may utilize to improve themselves and the success of their eventual reintegration into society. Agency A cooperates with other law enforcement agencies in the State and around the country on standardization of systems to facilitate sharing information.

Agency A employees have duties that include, but are not limited to, assignment on task forces that partner with a number of federal, state, and local government entities on a range of public safety activities.

Agency A employs Parole Officers, who have statutory authority to carry firearms and conduct the arrest of offenders in the community, perform investigations and submit sworn affidavits to court to obtain criminal arrest warrants, prepare parole violation reports requesting warrants for re-imprisonment from the parole board and have the statutory authority to enter another state armed for the purpose of apprehending/retaking of an offender.

Agency A also operates "specialized" units, such as an emergency response team, a hostage rescue team, a situational control team, and K-9 units.

Additionally, Agency A has a number of employees who have been appointed as "Peace Officers." Peace Officers may be members of the State Police or an organized local police department, adult probation officers, and officials of Agency A authorized by the Commissioner of Correction to make arrests in State correctional institutions or facilities.

Employees who work in State B correctional facilities do not have the power to arrest per se but do have the authority to exercise control, supervise, restrain or to place conditions on an offender's liberty, whether under supervision in the community or in actual imprisonment, confinement or detention in a correctional facility. These employees are authorized to use restraints as physical force to prevent escape; to prevent injuries to others or self; to prevent property damage; to ensure compliance with order; and to maintain order, safety and security. They have the authority to conduct pat searches of inmates at random, including any items in their possession. Further, these employees may search non-inmates and their belongings upon entering the perimeter or grounds of a correctional facility or any other site operated by Agency A.

Agency A employees may use physical force on an inmate to maintain discipline, order, safety and security while in the performance of the employee's official duties. Such employees are authorized to use deadly physical force when necessary to defend themselves, or a third person, from the use or imminent use of deadly physical force, or to prevent an escape of a person reasonably believed to have committed or attempted to commit a felony involving the infliction or threatened infliction of serious physical injury.

These employees are "armable," that is, while they have the authority to carry a weapon, they are not always permitted to carry a firearm.

Based on the above facts and representations, you request a ruling that Agency A constitutes a police department organized and operated by State B to provide police protection and/or emergency medical services for State B for purposes of the exemption from the age-reduced 415(b) limit created by Code section 415(b)(2)(G), and consequently all Plan C members who have 15 years of service credit or more as full-time Agency A employees, including military service credit, should be treated as qualified participants under Code section 415(b)(2)(H) and are therefore not subject to the age-reduced limit pursuant to Code section 415(b)(2)(C).

Under Code section 415(b)(1), a participant's annual benefit under a qualified defined benefit pension plan cannot exceed the lesser of \$160,000 (as adjusted annually for increases in the cost-of-living pursuant to section 415(d)(1)), or 100 percent of the participant's average compensation for his or her high three years.

Code section 415(b)(2)(C) generally requires an actuarial reduction of the \$160,000 limitation of Code section 415(b)(1) if the participant's benefit begins before age 62. However, Code section 415(b)(2)(G) provides that such an actuarial reduction of the \$160,000 limitation for benefits commencing before age 62 is not required for "qualified participants," as defined in Code section 415(b)(2)(H).

Code section 415(b)(2)(H) provides that the term "qualified participant" includes a participant in a defined benefit plan that is maintained by a State, Indian tribal government, or any political subdivision thereof, with respect to whom the period of service taken into account in determining the amount of the benefit under the defined benefit plan includes at least 15 years of service of the participant as either a member of the Armed Forces of the United States, or as a full-time employee of any police department or fire department that is organized and operated by the State, Indian tribal government, or any political subdivision, that maintains the defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the State, Indian tribal government, or any political subdivision.

Like Code section 415(b)(2)(H), section 1.415(b)-1(d)(3) of the Income Tax Regulations ("Regulations") states that a qualified participant includes a participant in a defined benefit plan that is maintained by a state, Indian tribal government, or any political subdivision of a state or Indian tribal government, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least 15 years of service of the participant as either a member of the Armed Forces of the United States, or as a full-time employee of any police department or fire department that is organized and operated by the state, Indian tribal government, or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the state, Indian tribal government, or political subdivision.

Example (6) of section 1.415(b)-1(d)(7) of the Regulations illustrates the proper identification of a qualified participant. Under Example (6), Participant O is a full-time, civilian employee of the Harbor Police Division of the State of X Port Authority. The Harbor Police Division provides police protective services. Participant O performs clerical services

for the Harbor Police Division. Participant O is a participant in the defined benefit plan that is maintained by the State of X with respect to whom the years of service taken into account in determining the amount of the benefit under the plan includes 10 years of service working for the Harbor Police Division and 5 years of service as a member of the Armed Forces of the United States. The Regulation concludes that, under the facts of Example (6), for a distribution with an annuity starting date that occurs before Participant O attains the age of 62, there is no age adjustment to the Code section 415(b)(1)(A) dollar limit. Accordingly, under the Regulation, as long as a participant works for a police or fire department, a participant may be a qualified participant under Code section 415(b)(2)(H), even though his or her job function is not, directly, to provide police protection, firefighting services, or emergency medical services.

Example (7) of section 1.415(b)-1(d)(7) of the Regulations also illustrates the proper identification of a qualified participant. In Example 7, Participant R is a full-time employee of the Emergency Medical Service Department of County Y (which is not part of a police or fire department) who performs services as a driver of an ambulance. R is a participant in a defined benefit plan that is maintained by County Y with respect to whom the years of service taken into account in determining the amount of the benefit under the plan includes 15 years of service working for County Y. R does not have service credit for time in the Armed Forces of the United States. The Regulation concludes that, under the facts of Example (7), the age adjustments to the limitations of Code section 415(b)(1)(A), pursuant to section 415(b)(2)(C), do apply if R commences receiving a distribution before age 62. Therefore, under the Regulation, a participant that is not employed by a police or fire department is not a qualified participant, even if he or she provides police protection, firefighting services, or emergency medical services for another employer of the state, Indian tribal government, or political subdivision thereof that maintains the defined benefit plan.

The legislative history of Code sections 415(b)(2)(G) and (H) includes a Senate Amendment to specifically include correctional employees as qualified participants¹ that was not adopted in the Conference Committee Report.² Thus, the legislative history of sections 415(b)(2)(G) and (H) indicates that Congress intended to define the term "qualified participant" narrowly for purposes of those Code sections.

Under Code section 415(b)(2)(H), corrections, probation, parole and other public safety officers are not included in the definition of "qualified participant." If Congress had intended to include corrections, probation, parole and other public safety officers in the definition of "qualified participant," it presumably would have done so. Rather, as suggested by the legislative history of Code section 415(b)(2)(G) and (H), Congress chose to define the term "qualified participant" more narrowly to include only full-time employees of police and fire departments.

¹ U.S. House. Tax Reform Act of 1986, Conference Report, (To Accompany H.R. 3838). (99 H. Rpt. 841; Vol. II, Title XI § D.) Washington: Government Printing Office, 1986.

² U.S. Senate Committee on Finance, Tax Reform Act of 1986 Together with Dissenting Views (To Accompany H.R. 3838). (99 S. Rpt. 313). Washington: Government Printing Office, 1986.

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Based on the foregoing, identifying qualified participants, for purposes of Code sections 415(b)(2)(G) and (H), requires an inquiry into the overall nature of the employer, and not the activities of any specific employees or groups of employees. In the present case, none of the operative laws, documents, or materials provided by Agency A describe an organization whose overall mission and nature is to be a police department. Rather, such laws, documents, and materials describe a State corrections department. In addition to their mission-related corrections activities, Agency A's employees perform work that is sophisticated, varied, and clearly relates to criminal justice and enforcement. Agency A's employees work closely with State and local police departments, and other state and federal law enforcement agencies, and some provide police protection and/or emergency medical services. However, the stated purpose of Agency A, itself, is not to be a police department or fire department. Accordingly, these employees are not qualified participants within the meaning of Code section 415(b)(2)(H). Therefore, Agency A employees are not eligible for the special limitation of Code section 415(b)(2)(G), and are, pursuant to section 415(b)(2)(C), subject to an adjustment of the \$160,000 limit of section 415(b)(1)(A) if benefits under Plan C begin before age 62.

Thus, with respect to your ruling request, we conclude that Agency A does not constitute a police department organized and operated by State B to provide police protection and/or emergency medical services for State B for purposes of the exemption from the age-reduced 415(b) limit created by Code section 415(b)(2)(G), and consequently all Plan C members who have 15 years of service credit or more as full-time Agency A employees, including military service credit, should not be treated as qualified participants under Code section 415(b)(2)(H) and are, therefore, subject to the age-reduced limit pursuant to Code section 415(b)(2)(C).

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

This ruling is directed only to the specific taxpayer that requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

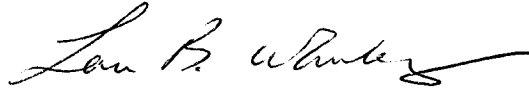
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Should you have any questions or concerns regarding this ruling, please contact xxxxxxxx (I.D. Number xxxxxxxxxx). He can be reached by telephone during normal business hours at (xxx) xxx-xxxx. Please address correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose

cc: xxxxxxxxxxxxxxxx
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